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EXAMINER				
BIAGINI CHRISTOPHER D				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/029,483

**Applicant(s)**

BERIKER, JAMES

**Examiner**

Christopher Biagini

**Art Unit**

2442

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Remarks***

This application has been assigned to a new examiner.

### ***Response to Arguments***

Applicant's arguments regarding the rejection of claims 1-5 under 35 USC 103(a) in the Appeal Brief filed February 28, 2008 have been fully considered and are persuasive. Accordingly, the rejection is withdrawn. However, upon further consideration, a new ground of rejection is made.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "means for establishing an account." However, it is not clear from the specification what structure performs this function. On page 2 of the Appeal Brief filed February 28, 2008, the Applicant attempts to identify the structure as the implicitly disclosed computer which runs the traffic management system. In other words, Applicant is identifying the "means for establishing an account" as the entire traffic management system. However, it is clear

based on the claim language that the means for establishing an account is *not* the entire management system. The preamble of the claim refers to a traffic management system. If the Applicant intended the structure that corresponds to the means for establishing an account to be the entire traffic management system, the Applicant would have not used different language (i.e., the means plus function limitation) to refer to that structure. The Applicant would merely have referred to the traffic management system itself. Thus, since the Applicant is attempting to claim some *piece* of the traffic management system, it is incumbent upon the Applicant to clearly identify what that piece is. Failing this, the Applicant has not particularly pointed out and distinctly claimed the subject matter which Applicant regards as the invention.

Claims 2-4 are rejected for incorporating the deficiencies of claim 1.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 USC 103(a) as being unpatentable over the AltaVista Affiliate Program website (hereinafter “AltaVista”) in view of Sugiura et al. (“Query routing for Web search engines: architecture and experiments,” hereinafter “Sugiura”).

Regarding claim 1, note that the preamble has been given patentable weight as it is necessary to give life, meaning, and vitality to the claim (see arguments at pp. 3 – 4 of the Appeal Brief filed February 28, 2008).

AltaVista shows a system for providing traffic management (comprising the system which implements the AltaVista Affiliate Program: see p. 1) on a computer network (the World Wide Web), wherein a referral provider (comprising an affiliate website: see p. 1) and a user computer (comprising the computer implicitly disclosed as the mechanism by which customers access the affiliate website: see pp. 1 and p. 10) are in communication via the computer network (see p. 10), the referral provider predefining referral provider preferences via the traffic management system for routing traffic generated by the user computer's search request transmitted to the referral provider (comprising choosing a referrer search field which indicates a preference that queries should be directed to, for example, the German-language altavista.de: see page 5), comprising:

- means for establishing an account for the referral provider (comprising the computer which serves and processes the application form shown on pp. 7 – 8), wherein the account includes an account name (comprising a site name: see p. 7), a unique identification (comprising a username: see p. 8) and a password (see p. 8); and
- a search referral module (comprising the module which directs user queries to the AltaVista site associated with the referrer search field).

AltaVista does not show:

- wherein the routing of the traffic is dependent upon the search request transmitted by the user computer;
- at least one traffic management parameter; and

- wherein the search referral module analyzes the user computer's search request.

Sugiura shows:

- routing of traffic that is dependent upon the search request transmitted by the user computer (comprising directing a user's query to an appropriate topic-specific search engine: see section 3.2 on p. 421 and section 5 on p. 428);
- at least one traffic management parameter (comprising "topic terms," which control how user queries are mapped to various search engines: see section 3.3 on p. 421);  
and
- a search referral module that analyzes the user computer's search request (comprising the module which performs query expansion on a search request in order to determine the degree of relevance between that search request and the topic terms for a particular search engine: see section 3.4 on p. 422 and section 3.6 on p. 424).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of AltaVista with the traffic routing, traffic management parameter, and search referral module taught by Sugiura in order to provide users with high-coverage and high-precision searching (see Sugiura, Introduction, p. 1).

Regarding claim 2, the combination further shows wherein the management parameters comprise at least one of a designated target location (comprising a topic-specific search engine: see section 3.1 on p. 419 of Sugiura), and a set of key search terms (comprising topic terms: see section 3.3 on p. 421).

Regarding claim 3, the combination further shows wherein the search referral module routes traffic to the designated target location (comprising directing a user's query to an appropriate topic-specific search engine: see section 3.2 on p. 421 and section 5 on p. 428 of Sugiura).

Regarding claim 4, the combination further shows wherein the search request comprises a set of user defined search terms (for example, "Python": see section 3.1 on p. 419), and wherein the referral module compares the user defined search terms and the predefined set of key search terms of the management parameters (comprising performing query expansion on a search request in order to determine the degree of relevance between that search request and the topic terms for a particular search engine: see section 3.4 on p. 422 and section 3.6 on p. 424).

Regarding claim 5, note that the preamble has been given patentable weight as it is necessary to give life, meaning, and vitality to the claim (see arguments at pp. 3 – 4 of the Appeal Brief filed February 28, 2008).

AltaVista shows a process for dynamically managing traffic on a network (the World Wide Web) having a referral provider computer (comprising the computer which hosts an affiliate website: see p. 1) and a user computer (comprising the computer implicitly disclosed as the mechanism by which customers access the affiliate website: see pp. 1 and p. 10), the user computer communicating with the referral provider computer and transmitting a search request to the referral provider computer (see p. 10), comprising:

- establishing a participating account, wherein the account is established by the referral provider (see pp. 7 – 8); and

- routing traffic to a target location (for example, altavista.de: see page 5).

AltaVista does not show:

- defining traffic management parameters; and
- analyzing the search request input by the user computer.

Sugiura shows:

- defining traffic management parameters (comprising collecting “topic terms,” which control how user queries are mapped to various search engines: see section 3.3 on p. 421); and
- analyzing a search request input by the user computer (comprising performing query expansion on a search request in order to determine the degree of relevance between that search request and the topic terms for a particular search engine: see section 3.4 on p. 422 and section 3.6 on p. 424).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system of AltaVista with the traffic management parameters and search request analysis taught by Sugiura in order to provide users with high-coverage and high-precision searching (see Sugiura, Introduction, page 1).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Landau et al. (US Pub. No. 2001/0047413) discusses referral providers establishing accounts for affiliate programs. Howe et al. (“SavvySearch: A Meta-Search Engine that Learns



which Search Engines to Query) discusses a system which directs traffic to a variety of search engines.

Additionally, the document "Internet Archive FAQ" describes the basic operation of the Internet Archive, which was used to provide documents relied upon in this Action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Biagini whose telephone number is (571) 272-9743. The examiner can normally be reached on weekdays from 8:30 AM to 5:00 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on (571) 272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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